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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,832	09/05/2003	Gary M. Richter	023720-0339	8427

7590 10/01/2004

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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,832

Applicant(s)

RICHTER ET AL.

Examiner

Khoa Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/08/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Specification

The Specification is objected to because of the following informalities: On page 6, line 1 of paragraph [00320] "FIGURE 1" should be --FIGURE 1-6-- in order to include the described reference numerals "52", "46" and "50"; on page 7, line 7 of paragraph [0036], "tack 38" should be --track 38--; on page 8, line 13, "front wall 46" should be --front wall 46, as shown in Figures 19 and 20,-- because Figures 12 and 13 do not illustrate a front wall "46". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 17, 20, 36, 37, 40 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 16 and 40, the claim fails to claim the invention. In particular, it should be noted that an apparatus claim, the patentability of the structure, itself, that is to be determined and not how it is intended to be used or how it is constructed. With respect to claims 17, 20, 36, 37, and 41, the claims are incomplete because it is not clear what element(s) being required to enable the recited function to be accomplished.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmid (U.S. Patent No. 5,366,099). Schmid discloses a merchandising system that meets all limitations of the claims. For example, Schmid discloses a merchandise system comprising:

a base (16) having a front (20) and a back (14), see Figure 1;

an assembly coupled to the base comprises a pusher member (26) configured to extend beyond the base;

the base is configured to support articles/products and defining a first space between the front wall (20) and the pusher member and defining a second space between the pusher member to the back of the base, see Figures 1 and 2.

Claims 1-3, 6-14, 16-21, 23, 24-27, 29, and 30-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Wombacher (U.S. Patent No. 4,724,968). Wombacher discloses a merchandise system that meets all limitations of the claims. For example, Wombacher discloses a merchandise system comprising:

an expandable base (2 and 3) having a front (4), a back, and one or more side element (18), see Figure 1;

an assembly coupled to the base comprises a pusher member (26) configured to extend beyond the back of the base;

the base is configured to support articles/products and defining a first space between the front wall (4) and the pusher member and defining a second space between the pusher member and the back of the base;

a biasing mechanism (29) provides a biasing force to the member so that to advance the member toward the front of the base.

Claims 1-28 and 30-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster et al. (U.S. Patent No. 5,240,126). Foster et al. disclose a merchandise system that meets all limitations of the claims. For example, Foster et al. discloses a merchandise system comprising:

an expandable base (18) having a front (14), a panel connected to the front, see Figures 1 and 5, a back end (16) connected to at least one extension body (78 and 80), and one or more side element (78);

an assembly coupled to the base comprises a pusher member (58) configured to extend beyond the back end of the base;

the base is configured to support articles/products and defining a first space between the front wall (14) and the pusher member and defining a second space between the pusher member and the back end of the base;

a biasing mechanism (52) provides a biasing force to the member so that to advance the member toward the front of the base;

the base further has a beveled surface (94, 94a) near the back end to connect to the extension body for allowing the articles to advance smoothly.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Finnely et al., Spamer et al., Maldonado, Stavros, Johnson et al., Rabas, Zuberbuhler et al., Henry, Polvere, close, Burchell, and Hawkinson et al., are cited to show a merchandise system that has similar configurations of design to applicants' invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun, can be reached on (703) 308-2156. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KT

Khoa Tran

September 23, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER